

How To: Apply for an expungement of record in Pennsylvania.

- Adult expungements are filed pursuant to 18 Pa.C.S. § 9122: Expungement, and 18 Pa.C.S. § 9122.1: Order for Limited Access. If the individual satisfies the requirements of § 9122 or § 9122.1, her or she may file an expungement petition with the court of which the act occurred pursuant to Pa.R.Crim.P. Rules 490, 790 and recently added Rule 791.
- Expungements involving juvenile offenses, offenses occurring before attaining 18 years of age, are filed pursuant to 18 Pa.C.S. § 9123: Juvenile Records.

Section 9122 states that criminal history record information shall be expunged when:

- In specific proceedings: when no disposition has been received or recorded in the repository for 18-months after the date of arrest and the proper court of jurisdiction certifies that no action is pending; the court requires that the non-conviction data be expunged; or any person 21 years of age or older cited or charged for underage consumption of alcohol which occurred on, or after the day such person attained 18 years of age, and such person has completed all terms of the sentence imposed for the violation.
- Generally, Criminal record history information may be expunged when: an individual who is the subject of the information reaches 70 years of age and has had a record clean of arrest or prosecution for ten years following release from confinement; an individual who is the subject of the information has been dead for three years; or an individual petitions the respective court for expungement of a summary offense as has been free from offense for five years following conviction of that offense.
- A court, however, may not order expungement of an individual's arrest record where the individual was placed on ARD for a violation of an offense in any of the following in which the victim was under 18 years of age: rape; statutory sexual assault; involuntary deviate sexual intercourse; sexual assault, aggravated/indecent assault; indecent exposure; prostitution; offenses related to obscene or sexual materials.

Section 9122.1: Order for limited access. Section 9122.1 sets forth a new category for expungements under Pennsylvania law. Pennsylvania Senate Bill 166, signed by Governor Tom Wolfe in February, 2016, became active November 14, 2016. Limited access means that the applicant's criminal record subject to expungement will be on file for police viewing but will not be accessible to the public. Those convicted of a misdemeanor of the second degree (M2) or third degree (M3), which carry a maximum penalty of no more than two years' imprisonment, are now eligible to have those charges expunged. That is so if 10 years have passed since the conviction and the individual has been conviction-free since the initial incident. Essentially, unless requested by a government or criminal justice agency, the individual seeking expungement is not required to disclose information about his or her criminal history records.

- **Exceptions-** Under this new law, an order for limited access will not be granted for a conviction of any of the following: an offense punishable by more than two years' imprisonment; for or more offenses punishable by one or more years' imprisonment; sexual intercourse with an animal; impersonating a public servant; etc...
- After filing for an expungement under this title, the applicable court files notice with the local Commonwealth district attorney. Within 30-days of receipt, the Commonwealth may choose to file objections with the petitioner. Typically, objections are filed depending on the type of crime charged. If no objections are filed, the court can grant the petition without a hearing if the requirements under this title have been met. If all requirements have been met, then the record will be sealed or considered "limited access."
- Under §9122.1, law enforcement agencies are required to maintain the record but may no longer disseminate it to any other entity, individual, noncriminal justice agency, or internet website, other than law enforcement. In this case, the record is not destroyed.

Section 9123: Juvenile Records. This section applies to juvenile delinquency cases and cases involving summary offenses committed by individuals under 18 years of age.

- The Court may order expungement if it finds that: the complaint filed is unsubstantiated; a written allegation was filed that was not approved for prosecution; six-months have elapsed since the individual completed informal adjustment and no proceeding seeking adjudication is pending; six-months have elapsed since the final discharge of the person from completion of a consent decree or diversion program; the individual is 18 years of age or older and six-months have elapsed since the individual completed all requirements of the sentence imposed following a conviction of a summary offense, with the exception of alcohol related offenses pursuant to § 6308; the individual is 18 years of age and has been convicted under §6308 while under 18 years of age and six-months have elapsed after completion of all terms and conditions of the violation; five-years have elapsed since disposition of the violation, including probation or commitment, and the individual has not been convicted of a felony, misdemeanor, or been adjudicated delinquent, and no proceeding is pending seeking conviction or adjudication; or the Commonwealth consents to the expungement and the court orders expungement after considering the type of offense, and any other factors supporting expungement.

Violations are not eligible for expungement if the individual was above 14 years of age at the time of the offense. Offenses include rape, involuntary deviate sexual intercourse and aggravated indecent assault, conspiracy to commit the above offenses, or other cause shown.

Petitioning for Expungement:

Adult- When the individual seeking an expungement satisfies every requirement of § 9122, he or she may petition the court where the act occurred for an expungement order, pursuant to Rule 490: Expungement in Summary Cases; or pursuant to Rule 790: Expungement in Court Cases. If the individual satisfies all requirements of § 9122.1, he or she may petition the court where the act occurred for an Order for Limited Access pursuant to Rule 791

- **Rule 490:** For summary offenses, the individual seeking expungement must file a petition. This petition includes name, address, SSN, DOB, name of the authority that issued the guilty plea or heard the case, the magisterial district court number, docket number, date on the complaint, charges, the disposition of the case, the reasons for the expungement, and the individual's verification that the facts set forth in the petition are true and accurate, typically provided for by a sworn affidavit or by written statement. Unless the Commonwealth agrees to waive this requirement, the individual must attach a current PA State Police criminal history report with the petition, and must obtain the history report within 60-days of filing the petition.

Within 30-days after service of the petition, the Commonwealth may file a consent or objection, or take no action with the petition. If the Commonwealth files objections, the objections are then served on the individual and the clerk of courts. Upon receipt of the objections, the judge has no later than 14-days after the expiration of the 30-day period to grant or deny the petition or schedule a hearing.

If a hearing is granted, the parties have the opportunity to be heard. Following the hearing, the judge will enter an order granting or denying expungement. Should the judge enter an order directing expungement, the order shall include the information set forth in the individual's original expungement petition. If the judge denies the petition for expungement, the judge will enter an order denying expungement, stating the reasons for denial.

- **Rule 790:** For obtaining expungement in court cases, which includes any case in which a summary offense is filed with a misdemeanor, felony, or murder or the first, second, or third degree. The requirements of Rule 790 are analogous to that of Rule 490 with one exception. The individual's petition must include the same biographical and offense information required by Rule 490. In regards to Rule 790, rather than a 30-day period for filing objections, the Commonwealth now has 60-days to file objections, or take no action on the petition. Likewise, the judge has no more than 14-days after the 60-day requirement to grant or deny the petition or schedule a hearing. The disposition rules are the same as Rule 490: the judge may either grant the petition and enter an order, or deny the petition and enter an order stating the reasons for denial.
- **Rule 791:** For obtaining an order for limit access, the petition requirements are analogous to those of Rules 490 and 790 with one exception. The individual seeking expungement must also include a statement that the case qualifies for a limited access order and none of the exceptions under § 9122.1(b) apply, such as offenses of more than two years' imprisonment, impersonating a public servant, etc... The Commonwealth has 30-days to file objections or take no action and the judge then has no more than 14-days after the 30-day period to grant or deny or schedule a hearing. Should the judge grant the order for limited access, the order shall include all information also required by Rules 490 and 790. Should the judge deny the petition, the judge shall enter an order denying the petition stating the reasons for denial.

Juvenile- When the juvenile seeking an expungement satisfies every requirement of § 9123, he or she may file a motion with the court where the act occurred for an expungement or destruction of record pursuant to Pa.R.J.C.P. Rules 170 and 172.

- **Rule 170:** A motion for expungement of a juvenile offense must include all relevant biographical information and information related to the offense. The motion must be served upon all parties, including the chief juvenile probation officer. The Commonwealth may choose to file objections to the motion. If no objections are filed within 30-days, they are waived. Upon receipt of the motion, the court conducts a hearing to grant or deny the motion after consideration of factors such as the type of offense and any other factors favoring expungement. In regards to transfer cases, a motion to expunge or destroy records are filed in the county in which the delinquency adjudication was entered.
- **Rule 172: Order to Expunge or Destroy:** A court order to expunge or destroy all records or documents related to the juvenile offense, including fingerprints or photographs must include the following:

All information contained in Rule 170; a directive specifying what specific records to destroy; a directive to the keeper of juvenile records to destroy or expunge the records; a directive that each agency will notify the court when destruction or expungement of record is completed; a directive to a school principle to destroy information received from the court; the issuing judge's name and signature; and the date of the order.